Vanity Fair Mills, Inc., Clarke Mills Division *and* Paul Parden, Petitioner. Case 15-RD-465

July 2, 1981

DECISION AND DIRECTION OF ELECTION

On September 29, 1980, employee Paul Parden (herein the Petitioner) filed a decertification petition under Section 9(c) of the National Labor Relations Act, as amended. The petition asserted that International Ladies' Garment Workers' Union, AFL-CIO, Local Union No. 118 (herein the Union),[1] certified since April 5, 1977, as the exclusive bargaining representative of all production and maintenance employees employed by Vanity Fair Mills, Inc., Clarke Mills Division (herein the Employer), at its Jackson, Alabama, plant, was no longer the representative of those employees.

On October 20, following an investigation, the Acting Regional Director for Region 15 dismissed the petition, on the grounds that the collective-bargaining agreement then in effect between the Employer and the Union constituted a bar to further proceedings on the instant petition.

Thereafter, Petitioner filed with the Board a request for review of the Acting Regional Director's dismissal of the petition. Having duly considered the matter, the Board issued its Ruling on Administrative Action on January 23, 1981, in which it concluded that reinstatement of the petition was warranted. Accordingly, the petition was reinstated and the case was remanded to the Regional Director for appropriate action.

Subsequently, a hearing was held before Hearing Officer A. W. Schwing, Jr., of the National Labor Relations Board. Following the close of the hearing the Regional Director transferred the case back to the Board for decision.[2] Thereafter Petitioner and the Union both filed briefs, and the Union also filed a motion for oral argument. That motion is hereby denied, as the record and briefs adequately present the issues and positions of the parties.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board finds:

1. The Employer is a Delaware corporation engaged in the manufacture and sale of ladies' lingerie at its Jackson, Alabama, facility. The parties have stipulated and we find that during the preceding 12-month period, which is a representative period, the Employer sold and shipped directly to points outside the State of Alabama products valued in excess of $50,000, and that during the same 12-month period the Employer purchased and had shipped directly to it from points outside the State of Alabama supplies and materials valued in excess of $50,000. Accordingly, we find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The parties stipulated and we find that the Union is a labor organization within the meaning of the Act.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated and we find that the appropriate unit is:

> All production and maintenance employees at the Employer's Jackson, Alabama, plant; excluding office clerical employees, supervisors including section instructors, sewing room instructors, marker supervisors, quality control instructors, press pack foreladies, quality control supervisors, standards analysts, assistant sewing room managers, chief sewing room machinists, air conditioning engineers, maintenance foremen, and other professional employees, guards and supervisors as defined in the Act.

Despite our aforementioned Ruling on Administrative Action, reinstating the instant petition and finding no contractual bars thereto, the Union continues to maintain that its September 17, 1980–December 15, 1983, collective-bargaining agreement constitutes a bar to the decertification election sought herein.

It is well established as a general proposition that an existing collective-bargaining agreement acts as a bar to an election within the unit covered by that agreement, and precludes the filing of a petition for any such election. There are, however, two qualifi-

[1] The Union was permitted to intervene at the hearing.

[2] In its Ruling on Administrative Action reinstating the instant petition following the Acting Regional Director's dismissal thereof, the Board concluded that neither the October 2, 1977–December 15, 1980, collective-bargaining agreement between the Union and the Employer, nor the September 17, 1980, memorandum of agreement between those parties, renewing their contract from September 17, 1980–December 15, 1983, was a bar to the decertification election petitioned for herein. Accordingly, the Board reinstated the petition and remanded the proceeding to the Regional Director for appropriate action. On remand, however, the Regional Director directed that a hearing be conducted to resolve the issue, as framed by the Hearing Officer, of whether the aforementioned September 17, 1980, memorandum of agreement between the Union and the Employer constituted a bar to the instant petition–an issue which, as seen above, the Board had expressly resolved in the negative in its earlier Ruling on Administrative Action.

cations to that general proposition which are relevent to the instant case.

First, there is an "open period," from 60 to 90 days prior to the expiration date of the existing contract, during which period the existence of the contract will not act as a bar to a petition for an election within the unit covered by the contract. *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962), modifying *Deluxe Metal Furniture Company*, 121 NLRB 995 (1958) (60 to 150 days). Thereafter, however, during the final 60 days of the term of an existing collective-bargaining agreement—the "insulated period"—the contract again becomes a bar to petitions for elections. *Deluxe Metal Furniture Company, supra.*

If a new contract is entered into during this final 60-day insulated period of the expiring contract, then the new contract will become a bar to petitions for elections for the duration of that contract, subject to the qualification discussed in the following paragraph.

The second important qualification to the contract bar principle is that only contracts of "reasonable duration" will act as bars to petitions for elections. The Board has held that collective-bargaining agreements of 3 years' duration or less are contracts of reasonable duration. *General Cable Corporation*, 139 NLRB 1123, 1125 (1962), modifying *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990 (1958) (2 years). Thus, contracts with fixed terms of more than 3 years will act as bars to election petitions only during the first 3 years of the contract. *General Cable Corporation, supra.* Consequently, when an existing collective-bargaining agreement has a fixed term of more than 3 years, the 60–90 day open period for the filing of petitions for election is measured from the *third anniversary date of the start of the contract* and not from the expiration date of the contract, and the 60-day insulated period is likewise the 60 days immediately preceding the third anniversary of the contract, and not the 60 days immediately preceding the expiration of the contract. *General Cable Corporation, supra; Pacific Coast Association, supra; Union Carbide Corporation*, 190 NLRB 191 (1971).

The Employer and the Union were parties to a collective-bargaining agreement covering the period October 2, 1977, through December 15, 1980, a term in excess of 3 years. Based on the above-discussed contract bar principle, the contract would only act as a bar during the first 3 years of its term, through October 2, 1980, and the 60 to 90 day open period during which petitions could be properly filed would be July 5–August 3, as measured from the third anniversary date of the start of the contract.

On or about June 11, 1980,[3] Petitioner telephoned the Region 15 office to ask about procedures for seeking decertification of the Union. Petitioner was advised by a Board field examiner that he could file a decertification petition 60 to 90 days prior to the expiration of the existing contract between the Employer and the Union. The field examiner asked Petitioner to call him back and tell him what the expiration date of the contract was. Thereafter, Petitioner and fellow employee Benny Harrison called back to the Region 15 office, and informed a different Regional Office employee of the December 15, 1980, expiration date of the contract; the field examiner with whom Petitioner had initially spoken was not in the office at the time of the return call.

On July 18, the Regional Office sent Petitioner the decertification petition he had requested. The letter transmitting the petition reiterated that the petition "[could] not be properly filed in any time period other than 60–90 days prior to the *expiration of the contract* or any time subsequent to the contract expiration." [Emphasis supplied.]

On September 17, Petitioner filed a decertification petition. However, the petition was defective in form (employee signatures on reverse side of the petition), and on September 22 the Regional Office advised Petitioner by letter that he would have to refile in the proper form. Once again, Petitioner was instructed that he "must file [the petition] with our office between the 60th and 90th day of [sic] the *expiration date of the union contract. Petitions which are filed outside of this period will be dismissed as untimely.*" [Emphasis supplied.]

On September 29, Petitioner resubmitted his decertification petition in the proper form. The next day, the Regional Office notified Petitioner that his petition had ben docketed and assigned for investigation.

Then on October 20, the Regional Office notified Petitioner that his petition was being dismissed, because "the collective-bargaining agreement currently in effect between [the Employer] and [the Union] constitutes a bar to further proceedings at this time." Thereafter, Petitioner filed his aforementioned request for review of the dismissal of his petition.

In the meantime, during September, the Employer and the Union were engaged in negotiations over a new contract to succeed the soon-to-expire October 2, 1977–December 15, 1980, contract then in effect. On September 17, the Employer and the Union entered into a memorandum of agreement extending their collective-bargaining agreement

[3] All dates hereinafter are 1980 unless otherwise indicated

from September 17, 1980, through December 15, 1983, with specified modifications.

The Union contends that the instant petition should be dismissed because it was not timely filed during the 60-90 day open period prior to the third anniversary of the start of the then existing collective-bargaining agreement, but instead was filed during the 60–day insulated period.

Petitioner, on the other hand, points out that he acted in accordance with the advice and instructions he was given by the Regional Office on three separate occasions from mid-June through late September, the last two times in writing, that is, that he could file his decertification petition *only* during the 60–90 day period preceding the *termination of the contract*, and that if the petition were filed outside of this period it would be dismissed.

We find merit in Petitioner's position. In giving the above advice, the Regional Office was unaware of, and did not attempt to find out, the origination date and the duration of the contract. Because the Region lacked this information its advice to the Petitioner was fatally flawed as to the periods during which the petition could be timely filed. The Petitioner, of course, was not aware that the advice was flawed. Moreover, he had no reason to suspect that, if he acted on such advice, his petition would be rejected as untimely. Thus, the Petitioner understandably followed this advice in the reasonable expectation that he was acting in accordance with Board requirements for filing a petition in a timely manner during the contract term. See *Madison General Hospital Association*, 218 NLRB 954 (1975).[4]

Accordingly, in view of the unusual circumstances presented herein, where Petitioner received from the Regional Office erroneous information concerning the application of a complex provision of Board law and procedure, we hereby affirm our earlier Ruling on Administrative Action reinstating the instant decertification petition, and hereby direct that an appropriate election be conducted, as specified below.

[Direction of Election and *Excelsior* footnote omitted from publication.]

[4] In our aforementioned Ruling on Administrative Action, wherein we reinstated the instant petition and ruled that there were no contractual bars to an election herein, we found that Petitioner had filed his petition in a timely manner with regard to what he reasonably considered to be the "expiration date of the original contract." Our use of the quoted phrase was inadvertently ambiguous; there neither was nor is any question about the precise expiration date of the original contract between Employer and the Union. Rather, as was clear then and remains clear now, there was incomplete guidance given to Petitioner about the proper time period for filing his petition.